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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**
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9 LILIA PERKINS, on behalf of herself
10 and all others similarly situated,

11 Plaintiff,

12 vs.

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14 PHILIPS ORAL HEALTH CARE,
15 INC., a Washington Corporation;
16 PHILIPS ELECTRONICS NORTH
17 AMERICA CORPORATION, a
18 Delaware Corporation; and DOES 1
19 through 20, inclusive,

20 Defendants.

CASE NO. 12-CV-1414-H
(BGS)

**ORDER STRIKING TRUTH
IN ADVERTISING, INC.'S
MOTION FOR LEAVE TO
FILE BRIEF AS AMICUS
CURIAE IN OPPOSITION TO
PROPOSED SETTLEMENT**

[Doc. No. 32]

21 On October 7, 2013, Plaintiff Lilia Perkins ("Plaintiff"), on behalf of herself and
22 the provisional certified class (together "Plaintiffs"), filed a motion for final approval
23 of class settlement and a motion for approval of attorneys' fees, costs, and service
24 award. (Doc. Nos. 27, 28.) Defendants Philips Oral Health Care, Inc. and Philips
25 Electronics North America Corporation ("Defendants" or "Philips") did not oppose the
26 motions.

27 On October 15, 2013, Truth in Advertising, Inc. ("TINA") requested leave of the
28 Court to file a brief as amicus curiae in opposition to the proposed settlement. (Doc.
No. 32.) On October 17, 2013, the Court issued an order granting the leave to the

1 parties to file briefs opposing TINA's filing on or before the final settlement hearing.
2 (Doc. No. 33.) On October 31, 2013, Defendants filed an opposition to TINA's motion.
3 (Doc. No. 35.) On November 1, 2013, Plaintiffs filed an opposition to TINA's motion.
4 On November 2, 2013, TINA filed a reply in response to the parties' motions.

5 TINA objects to the proposed settlement on the grounds that the vouchers do not
6 provide meaningful benefit to the proposed class members and that the class is not
7 protected from future deceptive advertising because Philips is not enjoined from
8 making the marketing claims at issue. (Doc. No. 32-1 at 3-7.) The parties have
9 responded by asserting that TINA, unlike a prospective class member, lacks standing
10 to object to the proposed settlement. (Doc. No. 35 at 3-6.) Additionally, the parties
11 dispute TINA's characterization of the settlement, and argue that the proposed
12 settlement confers meaningful benefits for all class members. (Doc. No. 35 at 7-9; Doc.
13 No. 40 at 2-4.) The parties also note that as of October 20, 2013, no class members
14 have filed objections to the proposed settlement, but class members have submitted 724
15 proof of claim forms to the settlement administrator.

16 "The privilege of being heard amicus rests solely within the discretion of the
17 court." Merritt v. McKenney, C 13-01391 JSW, 2013 WL 4552672 (N.D. Cal. Aug. 27,
18 2013) (quoting In re Roxford Foods Litig., 790 F.Supp. 987, 997 (E.D.Cal.1991)).
19 TINA urges the Court to deny approval of the proposed settlement because class
20 members will receive coupons. (Doc. No. 32-1 at 8.) The Court acknowledges its duty
21 under CAFA to scrutinize class action settlements that provide class members with
22 coupons. See 28 U.S.C. 1712(e) ("In a proposed settlement under which class
23 members would be awarded coupons, the court may approve the proposed settlement
24 only after a hearing to determine whether, and making a written finding that, the
25 settlement is fair, reasonable, and adequate for class members.")

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1 In this case, the Court has adequately scrutinized the proposed settlement and
2 conducted the fairness hearing required by CAFA. The Court has determined that the
3 coupons Defendants will provide to class members provide sufficient benefit to class
4 members such that final approval of the settlement is warranted. Accordingly, the Court
5 exercises its discretion and denies without prejudice TINA's request for leave to file
6 its amicus brief.

7 **IT IS SO ORDERED.**

8 DATED: November 4, 2013

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10 MARILYN L. HUFF, District Judge
11 UNITED STATES DISTRICT COURT
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